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EXAMINER

CHIANG, JACK

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2642

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/125,700
Filing Date: October 23, 1998
Appellant(s): FUHRMANN ET AL.

Stephen J. Wyse
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on April 01, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incomplete.

In addition to Appellant's statement, Claims 1-9, 11-13 and 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kobayashi et al.* in view of U.S. Patent No. 5,233,506 to *Semenik et al.* Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of *Kobayashi et al.* and *Semenik et al.* in view of *Takagi et al.*

This appeal involves claims 1-9, 11-13 and 15-17.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

(5) Summary of Invention

The summary of invention contained in the brief is deficient because all claims, such as all independent claims 1, 15-17, are directed **only** to the second embodiment (Fig. 5). For example, claim 1, lines 9-11; claim 15, lines 14-15; claim 16, lines 11-13; claim 17, lines 14-16, all claim that the key unit (24 in Fig. 5) being free to move or removable after the second housing is released from attachment with the first housing.

The above claims 1, 15-17 can not be a description of the first embodiment (Fig. 1-4), because the key unit 8 in Figs. 1-4 can not be free to move or removable after the second housing is released from attachment with the first housing. Figs. 1-4 actually were patented in Patent No. 6,347,218 to the current inventor *Fuhrmann et al.*

Figs. 1-4 are the first embodiment, Fig. 5 is the second embodiment, see Brief Description of the Drawings in page 4. These two embodiments are unique, and there is no original disclosure to mix these two embodiments to form a "**third** embodiment" (that is why Fig. 6 was not entered, see also the argument section). Appellant appears to mix these two embodiments together when summarizing the invention.

The examiner will provide a brief summary to the invention as follows:

In the **first** embodiment (Figs. 1-4), all electronic components (i.e. 8) are fixed to a first housing (2-3), a second housing (14) is fitted onto the first housing (2-3) by a press-on catch (11). All these electronic components, **including** the key unit (i.e. 8), ~~is~~ **are** not free to move or removable after the second housing (14) is released from attachment with the first housing (2-3).

In the **second** embodiment (Fig. 5), most of the electronic components (i.e. 23, 29) are fixed to a first housing (18) by a retaining means (35), **except** the key unit (24); a second housing (19) is attached to the first housing (18) by screws (43). The key unit (24) is sandwiched between the first (18) and second (19) housings, the key unit (24) is free to move or removable after the second housing (19) is released from attachment with the first housing (18).

(6) Issues

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: in the last paragraph of appellant's ISSUES ON APPEAL, paragraphs 7-9 of the Office Action dated 27 August 2004 represent an issue on Appeal.

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(7) Grouping of Claims

Appellant's brief includes a statement that claims 1-9, 11-13 and 15-17 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

This appeal involves claims 1-9, 11-13 and 15-17.

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,722,055	Kobayashi et al.	Feb. 24, 1998
5,235,636	Takagi et al.	Aug. 10, 1993
5,233,506	Semenik et al.	Aug. 3, 1993

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

NOTE: Fig. 6 and its description filed on 10-09-02 have not been entered (see the argument section below).

CLAIMS

112 First Paragraph Rejection

10A. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 6 recites "... a user may exchange covers easily without the use of a special tool". This is questionable. In the original disclosure, page 7, it states to use "a pointed object", in page 10, it states "the front housing is mated to the rear housing and the two are screwed together with screws 43". It is not seen that it is not using "a special tool". Therefore, the claim is considered unenabling and a new matter.

112 First Paragraph Rejection (Fig. 6 is not entered)

10B. Claims 1-17 (drawn to fig. 5) are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 15-17 recite "a press-on catch". The original claims (1-14), the original Fig. 5 (it shows screws 43), and the original specification do not have a press-on catch for the phone structure itself. **It uses screws 43, not press-on catch.** Therefore, it is a new matter (see also the argument section below).

Art Rejection

102 Rejection (Fig. 6 is not entered)

10C. Claims 1-9, 11-12, 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Kobayashi et al. (US 5722055).

Regarding claim 1, Kobayashi shows:

A first housing (23 in fig. 1);

A second housing (25 or 28) user releasably attachable to the first housing (23), the second housing (25 or 28) modifies the external appearance of the phone to the personal tastes (25 or 28) of the user; (note: in Fig. 1, either second housing 25 or 28

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may be used with the first housing 23, see col. 5, lines 1-9 in Kobayashi. Further, housing 25 has a design or appearance different from housing 28);

At least one key unit (24 or 27 in fig. 1);

At least one key sensor (41, 42 in figs. 4 or 6);

Retaining means (22 in figs. 1 or 5) comprising a cover (i.e. 43 in figs. 4 or 5) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is free to move when the second housing (25) is released (see 50-51) ¹.

¹ note that the claimed limitation "wherein said second housing press-on/catch by pressing it on" is considered new matter and has not been treated in this 102 rejection.

Regarding claim 15, Kobayashi shows:

A back housing (23);

At least one key unit (24);

At least one key sensor (41, 42);

A front housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

At least one opening (see 25-1-7-1);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the back housing (23, see 54 in fig. 33) when the front housing (25) is released from the back housing (23) by the user;

The key unit (24) is held between the front and back housings (25, 23), and is free to move when the front housing (25) is released (see 50-51).

Regarding claim 16, Kobayashi shows:

A first housing (23);

A second housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

At least one key unit (24);

At least one key sensor (41, 42);

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Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is sandwiched between the front and back housings (25, 23), and is free to move when the second housing (25) is released (see 50-51).

Regarding claim 17, Kobayashi shows:

A first housing (23);

A second housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

Attachment means (50-51);

At least one key unit (24);

At least one key sensor (41, 42);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is free to move when the second housing (25) is released (see 50-51).

Regarding claims 2-9, 11-12, the combination of Kobayashi and Semenik shows:

The user interface second housing (25 in Kobayashi);

A circuit board (i.e. 41, 45);

The key sensor (see 41);

The cover, the components and the circuit board (43, 41, 45);

The releasable cover (see 43, 43-4);

The cover aperture (see 43);

A sealing member (i.e. 40);

The first housing (23);

The second housing (25);

The key unit which is a key mat (24); and

The key sensor (41, 42).

10D. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Takagi et al. (US 523566).

Regarding claim 13, Kobayashi shows the key sensor (41, 42).

Kobayashi **differs** from the claimed invention in that it does not explicitly mention that the key sensor is a membrane type of key switch.

However, membrane type of key switch is one of the most common type of key switch, this is shown by Takagi (see 10).

Hence, if it is found that Kobayashi¹⁵ is not the membrane type of switch, then it would have been obvious for one of ordinary skill in the art to use the membrane type of switch in Kobayashi with/without the teaching of Takagi, because it is a conventional type of switch.

10E. The following 103 rejection is drafted to assist applicant to understand the overall cited prior art which potentially cover the claimed material even if Fig. 6 is entered.

103 Rejection (If Fig. 6 is entered)

10F. Claims 1-9, 11-12, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (US 5722055) in view of Semenik et al. (US 5233506).

Regarding claim 1, Kobayashi shows:

A first housing (23);

A second housing (25 or 28) user releasably attachable to the first housing (23), the second housing (25 or 28) modifies the external appearance of the phone to the personal tastes (25 or 28) of the user;

At least one key unit (24);

At least one key sensor (41, 42);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is free to move when the second housing (25) is released (see 50-51).

Kobayashi **differs** from the claimed invention in that Kobayashi uses screws (i.e. 50-53) to attach the second housing (25 or 28) and the first housing (23) together instead of using a press-on/catch.

However, in telephone housing assembly, it is commonly seen that a press-on/catch is used to attach a first and a second housing together. This is shown by Semenik (100, 200; or 500, 600).

Hence, it would have been obvious for one of ordinary skill in the art to modify Kobayashi with a press-on/catch when assembling the first and second housings as taught by Semenik, because it is understood that cell phones are getting smaller, this is including reduction in size and mechanical structures, and such press-on/catch shown by Semenik achieves the function of attaching the housings together and yet to reduced dimensions (col. 1, lines 42-50, col. 2, lines 41-47 in Semenik).

Regarding claim 15, Kobayashi shows:

A back housing (23);

At least one key unit (24);

At least one key sensor (41, 42);

A front housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

At least one opening (see 25-1-7-1);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the back housing (23, see 54 in fig. 33) when the front housing (25) is released from the back housing (23) by the user;

The key unit (24) is held between the front and back housings (25, 23), and is free to move when the front housing (25) is released (see 50-51).

Kobayashi **differs** from the claimed invention in that Kobayashi uses screw to attach the second and first housings together instead of using a press-on/catch.

However, in telephone housing assembly, it is commonly seen that a press-on/catch is used to attach a first and a second housing together. This is shown by Semenik (100, 200; or 500, 600).

Hence, it would have been obvious for one of ordinary skill in the art to modify Kobayashi with a press-on/catch when assembling the first and second housings as taught by Semenik, because it is understood that cell phones are getting smaller, this is including reduction in size and mechanical structures, and such press-on/catch shown by Semenik achieves the function of attaching the housings together and yet to reduced dimensions (col. 1, lines 42-50, col. 2, lines 41-47 in Semenik).

Regarding claim 16, Kobayashi shows:

A first housing (23);

A second housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

At least one key unit (24);

At least one key sensor (41, 42);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is sandwiched

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between the front and back housings (25, 23), and is free to move when the second housing (25) is released (see 50-51).

Kobayashi **differs** from the claimed invention in that Kobayashi uses screw to attach the second and first housings together instead of using a press-on/catch.

However, in telephone housing assembly, it is commonly seen that a press-on/catch is used to attach a first and a second housing together. This is shown by Semenik (100, 200; or 500, 600).

Hence, it would have been obvious for one of ordinary skill in the art to modify Kobayashi with a press-on/catch when assembling the first and second housings as taught by Semenik, because it is understood that cell phones are getting smaller, this is including reduction in size and mechanical structures, and such press-on/catch shown by Semenik achieves the function of attaching the housings together and yet to reduced dimensions (col. 1, lines 42-50, col. 2, lines 41-47 in Semenik).

Regarding claim 17, Kobayashi shows:

A first housing (23);

A second housing (25 or 28) for modifying the external appearance of the phone to the personal tastes (25 or 28) of the user;

Attachment means (50-51);

At least one key unit (24);

At least one key sensor (41, 42);

Retaining means (22) comprising a cover (i.e. 43) for holding the electronic components (in 22) to the first housing (23, see 54 in fig. 33) when the second housing (25) is released from the first housing (23) by the user, the key unit (24) is free to move when the second housing (25) is released (see 50-51).

Kobayashi **differs** from the claimed invention in that Kobayashi uses screw to attach the second and first housings together instead of using a press-on/catch.

However, in telephone housing assembly, it is commonly seen that a press-on/catch is used to attach a first and a second housing together. This is shown by Semenik (100, 200; or 500, 600).

Hence, it would have been obvious for one of ordinary skill in the art to modify Kobayashi with a press-on/catch when assembling the first and second housings as taught by Semenik, because it is understood that cell phones are getting smaller, this is including reduction in size and mechanical structures, and such press-on/catch shown by Semenik achieves the function of attaching the housings together and yet to reduced dimensions (col. 1, lines 42-50, col. 2, lines 41-47 in Semenik).

Regarding claims 2-9, 11-12, the combination of Kobayashi and Semenik shows:

The user interface second housing (25 in Kobayashi);

A circuit board (i.e. 41, 45);

The key sensor (see 41);

The cover, the components and the circuit board (43, 41, 45);

The releasable cover (see 43, 43-4);
The cover aperture (see 43);
A sealing member (i.e. 40);
The first housing (23);
The second housing (25);
The key unit which is a key mat (24); and
The key sensor (41, 42).

10G. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Kobayashi and Semenik in view of Takagi et al. (US 523566).

Regarding claim 13, the combination of Kobayashi and Semenik shows the key sensor (41, 42).

The combination of Kobayashi and Semenik **differs** from the claimed invention in that it does not explicitly mention that the key sensor is a membrane type of key switch.

However, membrane type of key switch is one of the most common type of key switch, this is shown by Takagi (see 10).

Hence, if it is found that the combination of Kobayashi and Semenik is not the membrane type of switch, then it would have been obvious for one of ordinary skill in the art to use the membrane type of switch in the combination of Kobayashi and Semenik with/without the teaching of Takagi, because it is a conventional type of switch.

(11) Response to Argument

In pages 8-9 of the appellant's argument, this portion of the argument is referring to the 112 first paragraph new matter rejection on the claimed "press-on catch" in claims 1, 15-17.

Appellant has cited page 5, lines 22-30; page 6; page 7, lines 15-16 to support his argument that Fig. 5 does not have the "press-on catch", and this is not material.

Before presenting the examiner's reasoning why a new matter rejection was issued. The examiner would like to provide a brief summary of the history of the case as follows:

When this patent application was filed on 10/23/98, there were total of five figures (Figs. 1-5) along with their Brief and Detailed Description of the Drawings. Figs. 1-4 were a first embodiment (they also belonged to Patent No. 6,347,218 to the current inventor *Fuhrmann et al.*), Fig. 5 was a second embodiment. **The original and current claims were all directed to the second embodiment (Fig. 5).**

The "press-on catch" was supported by the first embodiment (Figs. 1-4), but not supported by the second embodiment (Fig. 5).

In paper #13, amendment C filed on 02-20-02, the "press-on catch" feature was amended into the pending claims. The new matter rejection was first issued on Office action (paper #16) mailed on 04-12-02.

In paper #13, amendment C, and paper #21, amendment D filed on 10/09/02, additional Fig. 6 and its description were added in regard to this "press-on catch".

Here is the examiner's reasoning why a new matter rejection was issued on the "press-on catch" of the pending claims:

First, all pending claims are directed **only** to the second embodiment (Fig. 5).

Also, appellant originally disclosed two embodiments, see also the **Brief Description of the Drawings** on page 4. The first embodiment is Figs. 1-4, and the second embodiment is Fig. 5. **There is no embodiment on blending Figs. 1-5 together.** From the Amendment D (paper #21), now the **Brief Description of the Drawings** has "figure 6 shows an exploded view of *an embodiment* of the invention". According to the description of figure 6, in which it puts a "press-on catch" in Fig. 5, this clearly is a third and new embodiment.

Further, in the original disclosure, Fig. 5 uses four screws (43) to assemble the front housing (19), the back housing (18) and all the circuit components (i.e. 23) together. Note that these four screws (43) will penetrate at least four locations on the circuit board (23) to fix the circuit board (23) inside the housings (18-19). In other words, these four screws have additional function other than mounting the front and back housing together. Not only the press-on catch was not used or shown in Fig. 5, or adding the press-on catch in Fig. 5 would create new matter, if these four screws (43) were removed, the proposed "press-on catch" will only allow the front housing to be latched onto the second housing, it has not addressed the mounting of the circuit board along with other components inside the housing when screws were not used.

Appellant has cited page 5, lines 22-30; page 6; page 7, lines 15-16 to support his argument on the "press-on catch". The examiner agrees with the appellant. However, note that all these cited pages regarding the "press-on catch" are referring to the **first** embodiment (figs. 1-4), there is nothing about the "press-on catch" on the second embodiment (fig. 5). Appellant's argument that "Fig. 5 does not have the 'press-on catch', and this is not material", appellant is also correct because Fig. 5 uses only screws, not the "press-on catch". However, if blending Figs. 1-5 together without original support, then it is a new matter.

On page 9, the second paragraph, appellant states that "in paragraph 3 of the Office Action, also stated that the original Specification did not disclose 'a press-on catch for the phone structure itself'. The meaning of this comment is not entirely clear to Appellant."

The examiner would like to clarify the above statement. The examiner meant that the original specification did not disclose **Fig. 5** having a press-on catch for the phone structure itself.

In conclusion, the new matter rejection on the pending claims is proper.

From page 9 of the brief, last paragraph to page 10, paragraphs 1-3, appellant elects to have all claims stand or fall together (see page 10, lines 1-3).

In the 102 rejection under Kobayashi et al., the claimed "press-on catch" has not been addressed because this feature was considered as a new matter which was addressed under the 112 rejection.

In page 10 of the brief, lines 14-17, appellant states that "Appellant acknowledges that there have been submitted changes to the Specification and to the Drawings that the Examiner has refused to enter. This refusal, while still desirable, is not at issue in this Appeal, and Appellants in this Brief nowhere rely on or cite to the un-entered materials".

To clarify appellant's statement above, appellant means that **Fig. 6 and its description have not been entered, and appellant is not appealing this issue.** The examiner again would like to remind the Board that all pending claims are directed **only** to the second embodiment (fig. 5), because all pending claims recite that the key unit (24 in Fig. 5) being free to move or removable after the second housing is released from attachment with the first housing. In other words, the original Fig. 5 and its description use screws (43), not "press-on catch". Therefore, the 112 new matter rejection and the 102 rejection are sustainable.

On page 10 of the brief, last paragraph, about the 103 rejection under Kobayashi et al. in view of Semenik et al., Appellant states that this rejection is not an issue on Appeal, then appellant provides a full argument on this 103 rejection on page 11.

The examiner would like to clarify the record that this 103 rejection is an issue on Appeal.

On page 11 of the brief, lines 3-5, appellant first argues that "... neither references discloses a second (or front) housing that is releasably attached to a first (or back) housing by a press-on/catch closure....". Then, on page 11, lines 14-16, appellant states that " The disclosure of Semenik et al. does disclosure the use of a press-fit fastener of releasably fastening two housing portions together....".

It is believed that appellant's own statement is an answer to appellant's argument in regard to the "press-on catch". See also this "press-on catch" elements (100, 200; or 500, 600 in Semenik et al.) in the 103 rejection under the combination of Kobayashi and Semenik.

On page 11 of the brief, lines 5 and 12-13, appellant further argues that "... neither reference ... to change the appearance of the phone...". The examiner respectfully disagrees. In the combination of Kobayashi and Semenik, such as **Kobayashi's fig. 1, it shows that the phone body and rear housing (22-23) is selectively attached to either cover 25 or cover 28 (see also col. 5, lines 1-12 in Kobayashi)**. These two covers (25, 28) clearly have different design. They change the appearance of the phone depending on whether cover 25 is used or cover 28 is used.

On page 11 of the brief, lines 7-12, appellant argues that "... Kobayashi ... screws that pass from the rear of the unit through numerous components to the front Teaches away from a user-releasable housing ... meant for ease of construction, not removal by the consumer. When removed, the various components the screws are meant to secure will be freed along with the front case member". The examiner respectfully disagrees with appellant. When the front housing (i.e. 25 in Kobayashi)

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needs to be removed from the rear housing (i.e. 23), all various components (i.e. 22) are still attached to the rear housing (23) by screws (54-55) through holes (40-20, 40-21) (see figs. 1, 8, col. 6, lines 18-19) (**note: screws 54-55 do not pass through component 22**). In other words, when the front housing (25) is removed, all components (22) and the rear housing (23) are still attached.

Further, Kobayashi's housings are assembled together by screws, it is clear that the users can change the cover by themselves. In fact, it is commonly seen that phone vendors sell phone covers in different colors and designs, just like Kobayashi (Kobayashi's cover 25 has a different design than cover 28), one phone body can selectively fit different covers to change the appearance of the phone. If the users do not want to buy two or more covers, and change the cover by themselves, then the users can certainly bring the phone to a phone vendor to change the cover, this is still considered as a user-releasable housing. With the teaching of Semenik, such as the use of the press-on catch (500, 600 in Semenik), the removal of the press-on catch by a tool (950 in Semenik's fig. 8). It is even more obvious for one of ordinary skill in the art to change the cover by himself in the combination of Kobayashi and Semenik.

Further, the combination of Kobayashi and Semenik shows the retaining means (22 in Kobayashi). Semenik is cited to teach the press-on catch. Semenik is not used to teach the retaining means as argued by appellant in page 11, bottom paragraph.

On pages 12-13, this portion of the argument is a response to the 112 rejection of claim 6. Appellant mainly argues that it is not attachment means 11 that is being

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referred to in claim 6.... Claim 6 instead is referring to the releasably engagable relationship between the cover and the circuit board.

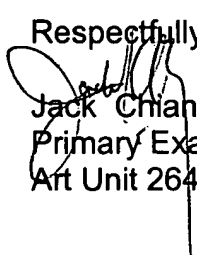
However, claim 6 recites that "an electronic radiotelephone as claimed in claim 3, wherein the cover is releasably engagable with the circuit so that a user may exchange covers easily without the use of a special tool.". First, the critical limitation here is "exchange covers easily without the use of a special tool". In the present application, regardless of whether the cover is engagable with the circuit or the back housing or both, appellant only discloses two methods of mounting the (front) cover, one is using a press-on catch in the first embodiment (figs. 1-4), the second method is using screws in the second embodiment (fig. 5), both methods require a special tool, see 112 rejection above.

In conclusion, this 112 rejection is sustainable.

For the above reasons, it is believed that the rejections should be sustained.

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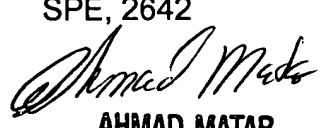
Respectfully submitted,

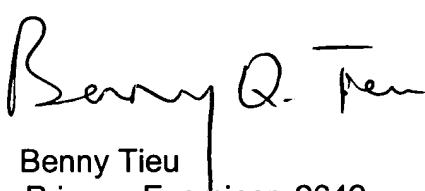

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June 22, 2004

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